

7.10 Rape Trauma Syndrome¹

(1) Rape trauma syndrome is a therapeutic concept encompassing identifiable behavioral, somatic, and psychological reactions a person may experience after a rape or attempted rape.

(2) The admissibility of expert testimony about an identifiable rape trauma syndrome reaction depends on meeting the criteria of Guide to New York Evidence rule 7.01 and on the reason the evidence is offered. It is admissible to dispel juror misconceptions regarding the ordinary responses of a victim of rape or attempted rape. Thus, for example:

(a) rape trauma syndrome evidence that a rape victim who knows her assailant is more fearful of disclosing the assailant's name to the police and is in fact less likely to report the rape at all is admissible to explain why the complainant may have been initially unwilling to report that the defendant had been the man who attacked her.

(b) rape trauma syndrome evidence that half of all women who have been forcibly raped are controlled and subdued following the attack is admissible to dispel misconceptions that jurors might possess regarding the ordinary responses of rape victims in the first hours after their attack.

(c) rape trauma syndrome evidence is admissible to assist the jury in understanding why the victim told her boyfriend about the rape the day after it occurred but refrained from telling her mother and the police until two weeks later as consistent with patterns of response exhibited by rape victims.

(3) Evidence of rape trauma syndrome is not admissible when it bears solely on proving that a rape

occurred or when its purpose is solely to bolster the credibility of the complainant's testimony.

Note

This rule is derived from the seminal Court of Appeals decision in *People v Taylor* (75 NY2d 277 [1990]).

Subdivision (1) provides a description of the syndrome drawn from *Taylor*. *Taylor* noted that the syndrome was a “therapeutic” concept, described as “the acute phase and long-term reorganization process that occurs as a result of forcible rape or attempted forcible rape. This syndrome of behavioral, somatic, and psychological reactions is an acute stress reaction to a life-threatening situation’ (Burgess & Holmstrom, *Rape Trauma Syndrome*, 131 Am J Psychiatry 981, 982 [1974])” (*Taylor* at 285).

Subdivision (2) (a) and subdivision (2) (b) are drawn from the following part of the *Taylor* opinion:

“[E]vidence of rape trauma syndrome can assist jurors in reaching a verdict by dispelling common misperceptions about rape [T]he reason why the testimony is offered will determine its helpfulness, its relevance and its potential for prejudice. . . .

“[I]n *Taylor* [the complaining witness] had initially told the police that she could not identify her assailant. Approximately two hours after she first told her mother that she had been raped and sodomized, she told her mother that she knew the defendant had done it. The complainant had known the defendant for years and had seen him the night before the assault. . . . [E]xpert testimony explaining that a rape victim who knows her assailant is more fearful of disclosing his name to the police and is in fact less likely to report the rape at all was relevant to explain why the complainant may have been initially unwilling to report that the defendant had been the man who attacked her. Behavior of this type is not within the ordinary understanding of the jury and testimony explaining this behavior assists the jury in determining what effect to give to the complainant’s initial failure to identify the defendant. This evidence provides a possible explanation for the complainant’s behavior that is consistent with her claim that she was raped. As such, it is relevant.

“Rape trauma syndrome evidence was also introduced in *Taylor* in response to evidence that revealed the complainant had not seemed upset following the attack. We note again in this context that the reaction of a rape victim in the hours following her attack is not something within the common understanding of the average lay juror. Indeed, the defense would clearly want the jury to infer that because the victim was not upset following the attack, she must not

have been raped. This inference runs contrary to the studies . . . which suggest that half of all women who have been forcibly raped are controlled and subdued following the attack. Thus, we conclude that evidence of this type is relevant to dispel misconceptions that jurors might possess regarding the ordinary responses of rape victims in the first hours after their attack” (*Taylor* at 292-293 [citations omitted]).

Subdivision (2) (c) recites the holding in *People v Maymi* (198 AD2d 153 [1st Dept 1993]).

Subdivision (3) is a dictate of *Taylor*’s companion case, *People v Banks* (75 NY2d at 293 [“evidence of rape trauma syndrome is inadmissible when it inescapably bears solely on proving that a rape occurred”]; *People v Bennett*, 79 NY2d 464, 473 [1992] [“expert opinion is inadmissible when introduced merely to prove that a sexual assault took place or bolster a witness’ credibility” (citation omitted)]; *Maymi*, 198 AD2d at 153 [in finding that the rape trauma syndrome evidence specified in subdivision (3) was admissible for an appropriate purpose, the Court rejected the idea that the evidence was admitted “for purposes of bolstering the victim’s testimony”]; see *People v Spicola*, 16 NY3d 441, 466 [2011] [in explaining that the expert on Child Sexual Abuse Accommodation Syndrome did not impermissibly bolster the child’s credibility, the Court stated that “the expert’s testimony certainly supported the boy’s credibility by supplying explanations other than fabrication for his post-molestation behavior. It was offered, after all, for purposes of just such rehabilitation. But . . . the expert did not express an opinion on the boy’s credibility”]; *People v Kukon*, 275 AD2d 478, 478-479 [3d Dept 2000] [in rejecting a claim that the expert on “child sexual abuse syndrome” “impermissibly bolstered” the credibility of the complainant, the Court stated that the “expert, who testified that she had not met or examined the victim in this case, did not impermissibly suggest that the victim had been sexually abused or that she exhibited signs similar to individuals who have been abused”]).

¹ In December 2021, this rule was revised to add to subdivision (2) the phrase “on meeting the criteria of Guide to New York Evidence rule 7.01.” The rule was also renumbered from 7.05 to 7.10.